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Attorney Docket Number: FSP0163

Client Reference Number: 260158US

Title: network performance monitoring

Application Number: 09/995,056

Filing Date: Monday, November 26, 2001

First Named Inventor: Cruickshank III, Robert F.

Group Art Unit: 2151

Contents of This Correspondence

7 pages of Reply Brief

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Attorney Docket Number: FSP0163
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Filing Date: Monday, November 26, 2001
First Named Inventor: Cruickshank III, Robert F.
Group Art Unit: 2151

I hereby certify that the following is being transmitted via facsimile to telephone number 571-273-8300 on Tuesday, October 23, 2007.

Signature: /Charles A. Mirho/
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TRANSMITTAL LETTER

for

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To:
Mail Stop Appeal Brief -Patents
Commissioner for Patents
P.O Box 1450
Alexandria, VA, 22313-1450, USA

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Submitted by:

Signature: /Charles A. Mirho/
Charles A. Mirho

on Tuesday, October 23, 2007.

Application Number: 09/995,056 – Reply Brief

REPLY BRIEF

for

Attorney Docket Number: FSP0163

Title: network performance monitoring

Application Number: 09/995,056

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First Named Inventor: Cruickshank III, Robert F.

Group Art Unit: 2151

This Reply Brief is made in response to the Examiner's Answer mailed
08/23/2007.

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Application Number: 09/995,056 – Reply Brief

ARGUMENTS

Are claims 1 and 33 anticipated by Foulger?

Foulger, Paragraph 97 teaches a web monitor application that captures IP addresses of visitors to a web site, and tests those addresses. Foulger, Paragraph 98 teaches a test application that performs a traceroute on captured IP addresses and does a DNS lookup on them. In Foulger, no analysis of network device locations/parameters is performed to provide an indication of the problem; the system of Foulger merely continues to run once the connection is restored; no suggested action is provided to address the problem. Data collection continues, and when the connection is restored, the appropriate amount of data is obtained (based on the timestamps of the web addresses, i.e. how long the connection was down).

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Are claims 12 and 44 unpatentable over Foulger in view of Feinberg?

Feinberg, Column 5, lines 40-49 is merely a general statement that the number of combinations and permutations for processing or shaping the raw data which comprises the QoS events to obtain QoS parameter values is nearly unlimited. The general statement of Feinberg is insufficient to anticipate the specific processing of weighting different metrics differently, when combining the metrics, dependent upon perceived relevance of an issue associated with the metric to network performance.

The only specific example provided by Feinberg teaches a QoS parameter value produced by summing un-weighted raw data, specifically the total number of lost packets in a one second period. There is no teaching of creating a combined metric by weighting the component metrics differently according to their relevance.

It is well established law that the disclosure of a broad genus does not anticipate every species of that genus. See Corning Glass Works v Sumitomo USA, 868 F.2d 1251, 1262 (Fed. Cir. 1989).

Application Number: 09/995,056 – Reply Brief**Are claims 13 and 45 unpatentable over Foulger in view of Feinberg?**

Feinberg, Column 5, lines 40-60 teaches comparing a QoS parameter value with a threshold value, and taking no corrective action if the value is within range. Feinberg teaches comparing a parameter with a threshold value but does not teach providing second metrics based upon the comparison.

Claims 13 and 45 describe comparing first metrics derived from the raw data with thresholds and providing second metrics based upon the comparisons.

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Are claims 14 and 46 unpatentable over Foulger in view of Feinberg?

Feinberg, Column 5, lines 45–49 teaches producing a QoS parameter by summing values over a period of time. This is something else entirely than providing indicia of grades of degraded performance of portions of the network as a function of time.

Feinberg, Column 5, lines 49–64 teaches taking no action if the parameter is out of range. This too is something else entirely than providing indicia of grades of degraded performance of portions of the network as a function of time.

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Are claims 23 and 55 unpatentable over Foulger in view of Vogel?

Vogel, Col. 13 lines 9-24 teaches that when impairments in the upstream channel from the cable modem to CMTS exist, cable modem systems provide for the ability to change the upstream channel in which a given cable modem uses to transmit. There is nothing in Vogel about the first and second data indicating a number of cable modem hours.

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Respectfully Submitted by:

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